

Domestic Violence
2018:
Survivors as Defendants,
Respondents, and Parole or
Clemency Applicants

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Sanctuary for Families, Parole Training
Manual for Pro Bono Attorneys Representing
Incarcerated Survivors of Gender Violence in
New York, Initiative for Incarcerated Survivors
of Gender Violence (October 2017)

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INTRODUCTION

The **Initiative for Incarcerated Survivors of Gender Violence** (the “Initiative”) is a collaboration among legal and social services organizations, law firms, advocacy groups, former judges, formerly incarcerated survivors, and other individuals committed to assisting survivors of gender violence who are incarcerated in New York State. First constituted in early 2017, the Initiative’s goals are three-fold: to provide representation in matters relating to parole, clemency, pardons, and reductions in sentencing to incarcerated survivors of gender violence whose imprisonment is a result of the abuse they suffered; to engage in advocacy to improve the system’s approach to parole release decisions for incarcerated survivors of gender based violence; and to provide education and training on issues of gender based violence for those involved in parole and clemency decision-making.

There is no right to counsel for parole applicants, and many individuals eligible for parole prepare for their parole interview on their own—a scary, overwhelming, and, sadly, often unsuccessful endeavor. This Training Manual provides a guide for pro bono attorneys who wish to assist incarcerated gender violence survivors to prepare for their parole interviews. The Training Manual provides an overview of the parole laws and the parole process in New York, as well as best practices for preparing your client for the parole interview. This Training Manual should be used in conjunction with, and not in place of, the Initiative’s live or recorded training programs.

AT A GLANCE: STEP BY STEP CASE GUIDE

This section provides an overview of the steps you will take as you assist your client in appearing before the New York State Board of Parole. These steps will be discussed at length throughout this Training Manual. Of course, as every client and every case varies, please consider the steps below as general guides only. You are encouraged to incorporate flexibility and creativity.

1. Attend or watch one of the Initiative’s parole/clemency trainings.
2. After you attend a training, you will be assigned a client and provided background material. You will also be assigned one or two mentors from the Initiative so that you have someone to provide advice and guidance throughout the case. Review all the background materials

- you receive and then schedule a call/meeting with your mentor to discuss next steps.
3. To the extent possible, begin gathering documents, even before meeting with your client.
 4. Meet with your client. You will need to have several meetings, but you should schedule the first meeting as soon as possible. During the first meeting be sure to discuss document gathering logistics and potential people to reach out to for letters of support; plan who will reach out for each person—you or your client. Also make sure you get a signed release from your client giving you authorization to request her records and speak with the NYS Department of Corrections and Community Supervision (“DOCCS”) on your client’s behalf.
 5. Continue gathering documents and meeting with your client. Prepare the parole packet.
 6. Review the final parole packet with your client and send it to her Supervising Offender Rehabilitation Coordinator (“SORC”) at least 4-6 weeks prior to the parole interview. Also send a copy to your client.
 7. Conduct mock parole interviews with your client to help her prepare.
 8. After the interview be sure to keep in contact with your client to find out the outcome of her parole interview. If she is denied parole she only has 30 days to file an administrative Notice of Appeal.

AT A GLANCE: PRISON LOGISTICS

You most likely will be working with a client at DOCCS Bedford Hills Correctional Facility for Women (the “Bedford Hills Facility”) or Taconic Correctional Facility (the “Taconic Facility”). The Bedford Hills Facility is a maximum security prison located at 247 Harris Road, Bedford Hills, NY 10507. The Bedford Hills Facility’s general phone number is (914) 241-3100. The Taconic Facility, which neighbors the Bedford Hills Facility, is a medium security prison located at 250 Harris Road, Bedford Hills, NY 10507. The Taconic Facility’s general phone number is (914) 241-3010. To get to either facility by public transportation, take the Metro North Harlem train line from Grand Central Station or 125th Street to the Bedford Hills station. Both facilities are a short cab ride from this stop.

Before you do anything you need to find out your client’s Department Identification Number (“DIN”). All correspondence with the client, and with the prison about the client (including visitation requests), must include

the DIN. It is important to obtain the DIN as soon as possible, either from the client or from the DOCCS Inmate Lookup webpage (<http://nysdoccslookup.doccs.ny.gov/>). This page also includes information about your client's crime(s) of conviction, sentence(s), date of entry, earliest release date, and current site of incarceration.

Scheduling a Meeting with Your Client

- You can schedule a legal visit¹ with someone in prison if you are an attorney, an approved legal representative (second or third year law student or graduate working under a student practice order), or an attorney's authorized representative (paralegals, law students, or individuals under the attorney's supervision). A legal visit usually (though not always) entitles you to a private room to discuss confidential legal matters.
- You must request permission from prison administration to visit your client at least 24 hours in advance of your proposed visit. Note that this notice may be waived for good cause. The process for requesting a visit varies by facility, so always call to confirm the procedure.

Bedford Hills Facility

- Call the guidance department, (914) 241-3100, ext. 4325, to request a visit and be prepared to give your client's name, DIN, purpose of visit, and two dates/specific time options for your proposed visit. The guidance department will then provide you with an email address, and you will need to follow up on your request in writing to that address (there is a sample visitation request letter in the resource library). The guidance department closes at 4.
- Legal visits are generally conducted Monday through Friday, except holidays, between the hours of 8:30 AM and 3:30 PM (last time for arrival is 3PM). You may also request a Saturday visit during these times, but it is subject to denial by the Watch Commander.

1. For more information on legal visits, review DOCCS Directive No. 4404 ("Inmate Legal Visits"), available at <http://www.doccs.ny.gov/Directives/4404.pdf>.

Taconic Facility

- Send an email request to the Inmate Records Coordinator (“IRC”), currently Christine Vanca. Her email address is christine.vanca@doccs.ny.gov. In this communication, on your organization or agency’s letterhead, provide your client’s name, DIN, and the requested date and time for the legal visit. Also include the names of all people who will be joining you, as well as whether you will be bringing any materials to the meeting.
- Legal visits are only permitted on Thursdays between 9AM and 3PM.

Visiting the Facility

- You must get a gate pass in advance of arriving. Specify in advance everything you are bringing for the visit so that it is all listed on the gate pass (*e.g.*, pens, legal pads, legal documents, etc.).
- You must have a photo identification for all visits (*e.g.*, driver’s license with photo, government issued photo identification, armed services I.D. with photo). Visitors should try to use the same identification at each visit.
- Bring proof that you are a licensed attorney (*e.g.*, Attorney Secure Pass; business card).
- You will need to pass through a metal detector and all bags are subject to search. The process will be made easier if you ensure beforehand that no item of clothing or accessory will be problematic (*e.g.*, underwire bras). Also, make sure there is nothing in your bag that is considered contraband by DOCCs. Examples of contraband include gum, food, beverages, and medication/. See http://www.doccs.ny.gov/RulesRegs/20120328_CCS-24-11-00005.html for more information about what is considered contraband.
- On your first visit you may be required to sign a statement indicating that you abide by the rules and regulations regarding visiting people in the prison.
- Expect delays during the security process and give yourself plenty of time.

During Your Visit

- You may give your client legal papers during the legal visit, subject to an inspection for contraband. The inspection should be done in the presence of the attorney and the incarcerated individual.
- Although you cannot bring in outside food or beverages for your client, you may want to purchase food and beverages from the vending machines in the visitor area to provide your client so she does not have to sit through a long interview with no food or drink.

Communicating With Your Client by Mail²

- You can send letters to your client by addressing them as follows:

Client Name, Client DIN

Bedford Hills

Correctional Facility

P.O Box 1000

Bedford Hills, NY 10507

OR

Client Name, Client DIN

Taconic Correctional Facility

250 Harris Road

Bedford Hills, New York 10507-

2497

- To ensure that correspondence you send to your client is considered privileged, the envelope must bear the identity and official business return address of your firm and must be marked “**Legal Mail.**”
- DOCCS provides a weekly postage allowance, equivalent to the postage for five domestic first-class letters, for certain outgoing correspondence, including correspondence to attorneys. However, to ensure that your client has enough postage to respond to you, you should always include a postage-prepaid, pre-addressed envelope (must be pre-addressed to you) when sending correspondence to which you would like a return letter.

Communicating With Your Client by Phone³

- People in the facilities are allowed a list of 15 phone numbers, and can make calls to those numbers every day between 7am and 11pm. Your client will need to add you to that list of phone numbers by submitting a request to her assigned Offender Rehabilitation

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2. For more information on corresponding with your client, review DOCCS Directive No. 4421 (“Privileged Correspondence”), available at <http://www.doccs.ny.gov/Directives/4421.pdf>.
 3. For more information on calling your client, review DOCCS Directive No. 4423 (“Inmate Telephone Calls”), available at <http://www.doccs.ny.gov/Directives/4423.pdf>.

Coordinator (“ORC”)⁴. These calls are recorded, and may not be more than 30 minutes long.

- You can also request a confidential call with your client in advance. You must provide at least 48 hours notice to the facility letting them know who you want to call.
 - At the Bedford Hills Facility, call the guidance department, (914) 241-3100, ext. 4325, to request a confidential call and be prepared to give them your client’s name, DIN, purpose of call, and two dates/specific time options for your call. The guidance department will then provide you with an email address, and you will need to follow up on your request in writing to that address. The guidance department closes at 4pm.
 - At the Taconic Facility, send a written request providing your client’s name, DIN, purpose of call, and two dates/specific time options for your call to Elizabeth Jallow, elizabeth.jallow@doccs.ny.gov.

Prison Bureaucracy

The administrative hierarchy at any DOCCS prison facility is as follows:

1. Superintendent
2. Deputy Superintendent for Security
3. Deputy Superintendent for Programs
4. Corrections Officers’ Captain

OVERVIEW OF PAROLE LAW IN NEW YORK

I. What is Parole?

Parole refers to the discretionary release of someone in prison serving an indeterminate sentence after that person has served her minimum sentence. Parole decisions are made by the New York State Board of Parole (the “Parole Board”), as opposed to clemency and pardon

4. The ORC is sometimes referred to as your client’s “counselor.” For more on the role of the ORC, see DOCCS Directive No. 4401 (“Guidance and Counseling Services”), available at <http://www.doccs.ny.gov/Directives/4401.pdf>.

decisions, which are made by the Governor. Parole in New York is generally governed by N.Y. Executive Law Article 12-B.

II. The Parole Board

The Parole Board is part of DOCCS. Its function, powers, and duties are outlined in N.Y. Executive Law §§ 259-c and 259-i. The Parole Board consists of up to nineteen members, called commissioners, who are appointed by the Governor and confirmed by the Senate, each for a term of six years. Members of the Parole Board are tasked with interviewing incarcerated persons, reviewing summary reports, and ultimately issuing determinations as to whether an incarcerated person will be released from prison. In practice, an incarcerated person's discretionary release interview is conducted by a panel of two or three members of the Parole Board, usually via video conference. Each interview typically lasts from a few minutes to about 45 minutes. If the incarcerated person is granted parole, the Parole Board also determines the conditions of release and has the authority to revoke parole.

III. Parole Eligibility

Incarcerated persons who have served the minimum number of years of an indeterminate sentence, or less if they receive merit time allowance credits,⁵ are eligible for parole. An indeterminate sentence is one that consists of a range of years, *e.g.*, 15 years to life.

IV. Determining Whether to Grant Parole

The Parole Board must consider a number of factors when determining whether to grant parole:

- (1) DOCCS case plan, if one exists;
- (2) the institutional record, including program goals and accomplishments, academic achievements, vocational education training or work assignments, therapy and interactions with staff and inmates;
- (3) performance, if any, as a participant in a temporary release program;
- (4) release plans, including community resources, employment, education and training and support services available to the inmate;

5. See N.Y. Correct. Law § 803 for a description of how incarcerated persons can earn merit time allowance credits.

- (5) any deportation order issued by the Federal government against the inmate while in the custody of the Department of Corrections and Community Supervision and any recommendation regarding deportation made by the Commissioner of the Department of Corrections and Community Supervision pursuant to section 147 of the Correction Law;
- (6) any statement made or submitted to the Board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated;
- (7) the length of the determinate sentence to which the inmate would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the Penal Law for a felony defined in article 220 or article 221 of the Penal Law;
- (8) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney and the attorney who represented the inmate in connection with the conviction for which the inmate is currently incarcerated, the pre-sentence probation report, as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to the inmate's current confinement; and
- (9) prior criminal record, including the nature and pattern of the inmate's offenses, age at the time of commitment of any prior criminal offense, adjustment to any previous periods of probation, community supervision and institutional confinement.⁶

Case law provides two additional criteria to be considered:

- **Remorse:** *See Matter of Simon v. Travis*, 95 N.Y.2d 470, 477 (2000)
- **Youth:** *See Hawkins v. N.Y.S. DOCCS*, 2016 WL 1689740, *3 (3d Dep't Apr. 28, 2016)

New York Executive Law also requires that the Parole Board "establish written procedures for its use in making parole decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release, and assist members of the state board of parole in determining

6. *See* 9 CYRR-NY 8002.3.

which inmates may be released to parole supervision.” N.Y. Exec. L. 259-c(4). DOCCS has selected the COMPAS assessment tool to comply with this mandate; thus, an individual’s COMPAS score must also be considered by the Parole Board.⁷

Additionally, pursuant to New York Executive Law Section 259-i(2)(a), “the board shall personally interview [a parole applicant] and determine whether he should be paroled in accordance with the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c....” Thus, the Parole Board should assess the factors to be considered through the lens of risk and needs principles.

THE PAROLE PROCESS

I. The Parole Packet

In preparation for the parole interview, you will need to create a “parole packet” with your client, the goal of which is to help explain to the Parole Board why your client should be released. The parole packet should address all of the factors that the Parole Board should be taking into consideration in making its decision. *See Creating a Compelling Parole Packet, infra*, for more detail on what information to include in the parole packet.

II. The Parole Interview

The parole interview is conducted by two or three members of the Parole Board. Each interview typically lasts from a few minutes to 45 minutes. Most interviews take place via video conference rather than in person. The interview is an important opportunity for your client to convey to the Parole Board that she is ready for release. The panel should have looked at the Inmate Status Report, pre-sentence report, sentencing minutes, and transcripts from past interviews, as well as your client’s parole packet. However, due to the volume of cases, it is often the case that only one commissioner on the panel has had an opportunity to review the material, and that person will take the lead during the interview. Incarcerated persons are not permitted to have attorneys with them during the interview, so preparing your client is critical. Clients need to be ready to advocate for themselves in a short amount of time, and to answer tough questions from the

7. *See Creating a Compelling Parole Packet, infra*, for more information on the COMPAS assessment.

interviewers. See **Preparing Your Client for the Parole Interview**, *infra*, for more detail on parole interview prep.

III. The Decision

The Parole Board has up to two weeks to issue its decision, but will typically send written notification of its release decision within several days of the interview. If release is approved, the Parole Board Decision Notice includes the release date and conditions of supervision upon release. If release is denied, the notice should detail the reasons for denial and a notice of the date the incarcerated person is next eligible for a parole interview, which cannot be more than two years after the denial date.

IV. Appeals

If parole is denied your client may file an administrative appeal. The Notice of Appeal must be filed within **thirty days** of receipt of the notice of denial, and the appeal must be perfected within four months of the date the Appeals Unit receives the Notice of Appeal. For more information on administrative appeals, refer to 9 N.Y.C.R.R. Part 8006.

If the administrative appeal is denied, the next step to consider is initiating an Article 78 procedure in New York Supreme Court.

PREPARING YOUR CLIENT FOR THE PAROLE INTERVIEW

Preparing an incarcerated survivor of gender violence for their Parole Board interview is a delicate, multi-step process that can be complicated for several reasons. First, victims of gender-based violence often suffer from multiple forms of trauma, potentially making it challenging for her to trust you right away and/or to fully disclose details of her story. Second, questioning from the Parole Board can be harsh, and in some cases “re-traumatizing, causing your client to shut down and/or present herself in a way that the Parole Board views negatively. Finally, you and your client need to determine how best to address—if at all—her history of abuse and her victimization. The Parole Board wants to see, *inter alia*, that your client has taken full responsibility for her actions and has expressed genuine remorse for her crime—something that can be challenging when your client is also the victim of a serious crime. As a result, you and your client need to determine how to convey, if at all, her history of victimization without appearing to use it as a justification for the crime she committed. It is a delicate balance, and one that this Training Manual and the live

training sessions will discuss in more detail. You should also strategize with your assigned mentor about how to address your client's past trauma and abuse with the Parole Board.

I. Representing a Survivor of Gender-Based Violence: A Trauma-Informed Approach

Trauma-informed lawyering means that you consider the realities of your client's traumatic experiences—all of them, not just the experience that led to her incarceration—and adjust your practice approach so that it is informed by those traumatic experiences. Understand that your client's past trauma will affect how she interacts with others, as well as how she recalls and tells her story.

In the following section we provide some tips on how to start building a trusting relationship with your client. In the library of materials that you will receive access to after your training, you will find an excellent article entitled "*Interviewing and Assisting Survivors of Domestic Violence*" that you should read before meeting your client.

II. Meeting Your Client

You will need to gather a significant amount of information from your client, and you should plan to meet with her several times in order to get everything you need and properly prepare her for her parole interview. But before the preparation process can begin in earnest, it is essential to take the time necessary during your initial meeting to develop a rapport with the client—to help her get comfortable talking about things that can be difficult to recall and retell, especially to strangers.

Inherent in any type of gender-based violence is the imbalance of power and the exploitation of that power inequality. Understand that your client will undoubtedly view you as having the power in the relationship when you first meet. She may feel the imbalance of education, economics, or privilege. Be aware of that dynamic when you first meeting your client, and do everything you can to mitigate that perceived power imbalance and put your client at ease. Below are some tips to help you begin building a strong attorney-client relationship.

- Do not wear your best or most expensive suit! Business casual is more than fine.

- Make sure to introduce everyone in the room, explain what organization or firm each person is from, and ensure that your client understands everyone's respective roles.
- Explain the concept of attorney-client privilege and that everything she says to you and everyone in the room is protected by attorney-client privilege.
- Your client may very well have been through the parole process before, or heard about her friends' experiences, and may be very familiar with it. First ask her about her understanding of the process, and then supplement what she knows by providing an overview of the parole process and the parole preparation process and explain how you hope to help her. Be sure to manage her expectations and emotions, and help her identify a support system to ensure she has someone to turn to should the parole interview not go her way. Give her an opportunity to ask questions about the process.
- Walk her through the engagement letter and explain everything in plain terms to her. Give her an opportunity to ask questions about the letter.
- Let her know that she should feel comfortable asking you any questions she has at any time during your meeting. She should feel like this is a collaborative process—not that you are telling her what to do or say in the parole interview.
- Start with open-ended questions. Let your client begin her story however she's comfortable. If possible, try not to interrupt her. Rather, jot down your questions and when she comes to a natural break, go back and ask her about the additional details you need to know. Because of the way our brains store traumatic memories, clients who have suffered severe and/or repeated trauma may not tell their story in chronological order, but you can always go back and get the order and approximate dates later.
- Remember that your client may have suffered multiple forms of trauma from multiple abusers throughout her life. A 1999 study of women in the Bedford Hills Correctional Facility found that 82% of women had been severely physically or sexually abused as children and 75% suffered serious physical violence by an

intimate partner during adulthood.⁸ Clients who have suffered repeated trauma may have difficulty recalling names, dates, places, and the chronological order of traumatic incidents. Be sensitive to this and do not make her feel bad, or like she is lying, because she cannot recall these specific details.

- Be careful that your questions are not judgmental. Do not ask questions like, *Why did you stay so long? You only knew him for a few days, why did you trust him? Why didn't you go to the police right away? Why didn't you just go to a shelter?* These types of questions will cause clients to shut down.
- Abuse from an intimate partner or loved one can result in some very complicated feelings. Understand that your client may have confused or ambivalent feelings about the person who abused her and about her role in the different abusive or violent events over the course of her time with the abuser. She may also have favorable memories of the abuser and not want to disparage him.
- If you are about to embark on a line of questioning that will be uncomfortable for your client, explain the reason behind the questions and make sure she knows that you are not asking the questions to be invasive or because you do not believe her.
- Be careful about your reactions to some of the more difficult parts of your client's story. Especially if your client is a survivor of sexual trauma, she may feel intense shame in telling you about that abuse. You may be tempted to express feelings of horror or disgust at what the perpetrator did—but your client may internalize it as you feeling horror and disgust toward her.
- If your client begins to cry or becomes upset, do not try to comfort her by initiating a hug or touching her. This could make your client more uncomfortable, or could be a trigger (it could also be an issue for corrections staff). Take a break and talk about something neutral.
- Note that it can be especially difficult for a female client to feel at ease discussing abuse—especially sexual abuse—with a man. If this seems to be the case, talk to your assigned mentor about it, or to a therapist or advocate experienced in dealing with trauma

8. Angela Brown et al., *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women*, 22 Int'l L.L. & Psychiatry 301, 3010-22 (1999).

patients. Sometimes it just takes a little more time for a survivor of gender-based violence to feel at ease with certain genders.

III. Subjects to Cover

The outline below provides a non-exhaustive list of some important areas to discuss during your client interviews. Also, make sure that in your first meeting you obtain a signed release from your client authorizing you to request records and speak with DOCCS on her behalf.

1. Context
 - a. Family and family history, including any history of abuse as a child. Also be sure to find out who in her family your client still has contact with—you may want some family members to write letters of support on your client’s behalf.
 - b. The abuse she suffered as an adult and how she feels now about that abuse. Has she had any counseling to address feelings about the abuse? How has that helped?
2. Criminal History
 - a. The crime for which she was incarcerated—including the history of the related legal proceedings.
 - b. Any other crimes for which she was arrested or convicted, and all previous experience with the criminal justice system (interactions with police, family court, and criminal court as well as obstacles to seeking help including calling the police and fear of the abusive partner).
 - c. How she feels now about the crime she committed.
3. Post-Conviction
 - a. Her history during incarceration, including:
 - i. All prisons she has been in
 - ii. Accomplishments (*e.g.*, courses, degrees, completing substance abuse treatment programs; Down on Violence program or similar programs). Note that your client may not have had the opportunity to attend courses for various reasons. If your client has not completed any programs, explore a little more about why and consider mentioning the reason in the parole packet.
 - iii. Work history in prison

- iv. Disciplinary institutional record, including her explanation and resolution for any infractions (make sure to obtain a copy of her record)
 - b. Prior parole hearings—obtain prior parole packets, transcripts, and decisions to the extent possible. Try to identify what the problem areas were in previous parole denials and discuss those areas with your client.
4. Letters of Support—discuss relationships she has with people who might be in a position to write letters of support. Ask about who, if anyone, comes to visit her or who she stays in contact with through the mail.
5. Post-release plans and goals.

IV. Preparing for the Parole Interview

A. The Four Rs + The Truth

The most important things that a client can do at a parole interview are to (i) take full **responsibility** for the crime for which she was convicted, (ii) express genuine **remorse** for the harm she caused, (iii) convince the panel that she has been **rehabilitated**—*i.e.*, that she will not be a danger to society if released—and (iv) demonstrate that she has a viable **release plan** in place and has an understanding of the entity to whom she will be paroled as well as a basic understanding of her transitional needs and how they will be addressed. In these and all other respects, the client must be, and come across as, entirely **truthful**. If the panel does not believe that the client is truthful, her application will almost certainly be denied.

So, as you work through the preparation with your client, always keep in mind these five key elements that must be part of your client's narrative: **responsibility, remorse, rehabilitation, a release plan, and truthfulness**.

While every case and client is different, it is important to convince the client of the importance of these guiding principles and to keep them foremost in mind as she prepares for the parole interview and answers questions put to her by the parole panel. Stated simply, credibly establishing the four Rs—and especially her responsibility and remorse for the crime—is her best chance at release.

B. Steps in the Process

1. Work with the client on how to talk about her crime in some detail and, as per above, taking full ownership of the wrong she committed, and *not* trying to excuse it due to the abuse she suffered.
 - a. Prepare to own up to “bad” facts, e.g., if she did not immediately confess or initially tried to cover up the crime, conspired with someone else to commit the crime, or acted outside the heat of the moment. Again, the key is to use the questions as opportunities to demonstrate ownership of, and remorse for, the crime.
 - b. Then vs. Now: One way to talk about the crime is to have the client talk about what she did and thought back *then*, at the time of the crime, and to explain that she is a different person now, focusing on the rehabilitative work she has done in prison to address her trauma history, develop social/emotional skills, and self-examination, as a result of which she understands *now* that what she did was wrong and unjustified and that she feels genuine remorse for the harm she caused.
2. Prepare the client for the kinds of questions she may get at the interview.
 - a. Review any prior transcripts to see what questions she was asked in the past and determine how the client could answer those questions differently, or how she could expand upon her answers
 - b. Review prior decisions denying the client’s prior parole applications to see where the Parole Board believed the client fell short.
 - c. **Caution:** While it is important to prepare the client for the kinds of tough questions she could get, particularly given the fact that clients may be suffering from trauma, it is equally important to build up their confidence, not impair it, during the preparation process.
3. The client should be familiar with the materials in her package and may have an opportunity to point the panel to particularly important documents it contains.

C. Adding Members to the Prep Team

1. Each case is different. The team players must be considered and determined on a case by case. Concerns about attorney-client privilege and clear communication between the attorney and any team members must be addressed.
2. When there is a long trauma history and several parole denials, obtaining a specialized forensic exam that can weave everything together to make the life of the survivor and the context in which the crime happened may make sense. This can both help the Parole Commissioners to better understand the person before them and provide them with something new to rely on as a reason to reverse course and decide on release after previous denials. If you think this would help please discuss it you're your assigned mentor.
3. A trained social worker or therapist can assist the survivor in the process of taking responsibility, processing feelings of guilt, shame, and anger to move toward genuine understanding and remorse and assist in building self-esteem and confidence while managing expectations.
4. Outside visitors can provide an opportunity to talk about other important topics and may be helpful in preparing the survivor for life outside, including employment and housing, and in building an outside support group to write letters of support for parole.
5. After 15-30 years in prison, many no longer have a reliable connection to the outside world. The opposition has never receded, but the supporters have likely receded or are deceased. Letters of support from key public figures and from the public can help to balance this out and give the Parole Board some idea that the survivor will have a community of support on the outside. Someone to coordinate this effort can be very helpful to the legal team.

D. Determining Whether the Client Should Read a Written Statement

In some cases it may be useful to have the client be prepared to read a concise statement to the parole panel, emphasizing the four Rs noted above. It is preferable that the client speak effectively on her own without reading, but if you think that may be challenging for your client, it is okay to help her craft a statement to read or an

outline to follow, in which case she should ask permission to read it at the beginning of the interview or to refer to it as she makes her statement.

CREATING A COMPELLING PAROLE PACKET

I. Gathering Documents

One of the most important steps in preparing a parole application packet is to make sure you have gathered all available evidence that demonstrates that your client is a suitable candidate for release on parole. In assembling evidentiary materials, keep in mind the statutory factors⁹ that the Parole Board must consider in making its determination and make sure that the materials ultimately included in the packet provide sufficient factual support for the Parole Board to assess all relevant statutory factors.

A. Institutional and Case Records

**** Note that you should request your client's records as soon as possible. ****

The Parole Board is required to review certain records when considering whether to grant parole. You need to obtain all of the same records so you can review them with your client prior to her parole interview. If the records are positive, include and highlight them in the parole packet; if there are issues, try to address them in the parole packet and in your parole interview prep.

Pre-Sentence Report ("PSR"). The PSR is compiled by the Department of Probation prior to a person's sentencing. Even though the PSR may be quite old, the parole panel may nonetheless ask questions about things contained within the PSR. Review DOCCS Directive No. 8370 ("Inmate Requests for Copies of Presentence Reports"), available at <http://www.doccs.ny.gov/Directives/8370.pdf>, for details on how to request the PSR.

Sentencing minutes. The parole panel will review the transcript from your client's sentencing hearing. There should be a copy of your client's sentencing transcripts in her parole file at the prison. The parole panel will review the transcript from your client's sentencing hearing. There should be a copy of your client's sentencing transcripts in her parole file at the prison. Review DOCCS Directive No. 2010 ("FOIL/Access

9. See NY Executive Law § 259-i[2][c][A]; see also **Overview of Parole Law in New York**, *infra*.

to Department Records”), available at <http://www.doccs.ny.gov/Directives/2010.pdf>, for details on how to request documents from your client’s file. Requests must be made in writing on your firm’s letterhead and include a signed release from your client. Requests will go to either the Inmate Records Coordinator (“IRC”) or the FOIL Officer, depending on the prison facility. Call the facility before making the request and find out what that facility’s exact procedure is, as well as the name, email, and address of the person to whom the request should be sent. Send the written request via email and first class mail. Note that the facility may require payment for copies of the record *before* they will send you the records. Try to expedite this process by requesting a waiver of the fee, especially if you can get the document electronically, or ask if they can provide the records with a bill. *See* Directive No. 2010, pg. 7. If they refuse, ask if they will accept an email with a pdf copy of proof of payment. Note that you can also try reaching out to your client’s previous trial or appellate attorney to get transcript copies, or try ordering through the courts (which may be difficult if the transcript is very old).

Parole Board Report. This report (previously called an Inmate Status Report) is generated by your client’s ORC in preparation for her parole interview. The ORC will need to conduct an interview with your client before creating the report. The report must then be approved by the SORC. Your client should request a copy of the report at the time of her interview with her ORC. She should continue to follow up with her ORC to get the report, although she may not get it until a few days before the parole interview.

COMPAS/Case Plan. The Correctional Offender Management Profiling for Alternative Sanctions (“COMPAS”) Assessment and Case Plan is designed to access your client’s risk to public safety upon release, as well as identify her needs upon release. This will be provided to your client shortly before her parole interview. If your client has been before a parole panel before, she should already have past assessments that you should also review.

Although the parole panel is not required to review the records listed below, you should nonetheless obtain them and use them to help prepare your client for the parole interview and highlight them in the parole packet if appropriate, or if there are issues, try to address those issues in the parole packet.

Client’s Trial Transcripts. There should be a copy of your client’s trial transcripts in her parole file. Review DOCCS Directive No. 2010 (“FOIL/Access to Department Records”), available at <http://www.doccs.ny.gov/Directives/2010.pdf>, for details on how to request documents from your client’s file. Requests must be made in writing on your firm’s letterhead and include a signed release from your client. Requests will go to either the Inmate Records Coordinator (“IRC”) or the FOIL Officer, depending on the prison facility. Call the facility before making the request and find out what that facility’s exact procedure is, as well as the name, email, and address of the person to whom the request should be

sent. Send the written request via email and first class mail. Note that the facility may require payment for copies of the record *before* they will send you the records. Try to expedite this process by requesting a waiver of the fee, especially if you can get the document electronically, or ask if they can provide the records with a bill. *See* Directive No. 2010, pg. 7. If they refuse, ask if they will accept an email with a pdf copy of proof of payment. Note that you can also try reaching out to your client’s previous trial or appellate attorney to get transcript copies, or try ordering through the courts (which may be difficult if the transcript is very old).

Previous Parole Transcripts. If your client has been denied parole on a prior occasion, request copies of all previous parole interview transcripts. Reviewing the hearing transcripts will help you identify the issues that arose at the prior parole interview that led to the denial of parole and will enable you to address these issues preemptively in the application materials and better prepare your client for the hearing. Review DOCCS Directive No. 2010 (“FOIL/Access to Department Records”), available at <http://www.doccs.ny.gov/Directives/2010.pdf>, for details on how to request documents from your client’s file. Requests must be made in writing on your firm’s letterhead and include a signed release from your client. Requests will go to either the Inmate Records Coordinator (“IRC”) or the FOIL Officer, depending on the prison facility. Call the facility before making the request and find out what that facility’s exact procedure is, as well as the name, email, and address of the person to whom the request should be sent. Send the written request via email and first class mail. Note that the facility may require payment for copies of the record *before* they will send you the records. Try to expedite this process by requesting a waiver of the fee, especially if you can get the document electronically or ask if they can provide the records with a bill and assure prompt payment. *See* Directive No. 2010, pg. 7.

Education, Programming, and Disciplinary records. You or your client should request the records from your client’s counselor at the prison. Note that you may get the records faster if you make the request instead of your client.

Training & Employability Report. You or your client should request the records from your client’s counselor at the prison. Note that you may get it faster if you make the request instead of your client.

B. Other Resources

Your client is your greatest resource in determining what other documents may be appropriate for the parole packet. Explore any records or letters of support that she has already collected. Ask about specific achievements and anecdotes to highlight in the application—make sure she understands that no achievement is too small. Collect all certificates, diplomas, and any other evidence of your client’s achievements. Also explore with your client all individuals who might be willing to write letters of support on her behalf.

Identify and collect corroborative documents regarding the history of gender-based violence.

Your client's former attorney could be a valuable resource and may be able to provide case records and trial transcripts, help you better understand the underlying case, including the history of abuse and any other mitigating or aggravating factors, and provide general advice and guidance.

There have been a number of recent court decisions addressing denials of parole in cases where gender violence played a role in the commission of the crime and you should consider citing to these cases in the cover letter.

And finally, you should be creative in your advocacy. Take advantage of any materials, media, persons, organizations, or resources available to you.

II. Contents of the Packet

Generally, the evidentiary materials included in the parole application packet will fall into the following categories:

A. Achievements in prison, including any awards, academic achievements, program participation, work history, and recognition for good behavior

One of the statutory factors the Parole Board must consider is the individual's institutional record. It is therefore critical that you include as much information as possible about your client's achievements and good behavior. This category includes any courses, training programs, or degrees your client has completed as well as any work or volunteer experiences that highlight any skills your client has developed, her work ethic, and her overall commitment to rehabilitation. It may also include certificates for participating in programs whether required or voluntary. Work history and skills training may be included.

Be creative and think beyond conventional forms of achievement. For example, a recent parole application completed by one of our pro bono attorneys highlighted an anecdote that demonstrated the client's trustworthiness and honesty: she had found the keys to the prison and turned them in to prison officials. The application packet included notes that prison administrators had written describing the incident, praising her, and expressing their gratitude.

B. Challenging or Bad Facts

While it is critical to provide evidence of your client's achievements, you should also be aware of any disciplinary issues that you will need to explain in the parole application and prepare your client to address at the hearing. And if your client has not had any disciplinary issues, it is important to note that as well. Your client may have obstacles which may have contributed to disciplinary problems or low achievement as a result of low IQ, mental health, or physical challenges such as deafness. These should be included in the explanation.

C. Letters of support from prison officials, administrators, counselors and/or educators

Work with the client to identify any former professors, instructors, social workers, counselors, or religious leaders with whom your client has worked closely and can speak to your client's attitude, kindness, ability to work with others, and willingness to learn/work, etc. You may also consider reaching out to administrators or staff within the correctional facility with whom she has had a positive relationship and may be willing provide letters of support. Current employees of the facility may need to get permission to submit a letter of support, so be sure to make the request with plenty of advance time.

In working with administrators, counselors, relatives, and any others who have agreed to write letters of support, do not hesitate to provide guidance as to what you would like to include or emphasize in the letter. Keep in mind that you will be quoting from the letters of support in the cover letter of the application packet, discussed below. Therefore, while it is important that the letters of support are completely truthful and are told in the writer's own words, it is essential that the letters adequately describe your client's positive attributes and provide concrete anecdotes and examples.

D. Letters from organizations that will provide employment, financial, educational, and/or psychological support services to your client upon release

One statutory factor the Parole Commissioners must consider is your client's "release plan[] including community resources, employment, education and training and support services available"

upon release. It is therefore critical that you provide as much information as possible to demonstrate that the client has a sustainable release plan in place and that she will receive the resources necessary to facilitate the transition back into the community. It is also essential to show that your client will have a place to live.¹⁰

E. Letters from close friends and family detailing the type of support they intend to provide upon release

Letters from friends and family who will provide any form of support upon release are also critical. It is important to provide specific details regarding the type and level of support to be provided. A letter from a friend or relative might explain, for example, that she plans to visit three times per week, that she has a job lined up for your client upon release, that she plans to put your client into contact with the family priest who provides counseling, etc.

After a long period of incarceration, family and community ties may no longer exist. Consider drafting a one page “Meet [Client Name]” letter which introduces the client to your friends and their friends providing a brief history of achievement highlights and plans for re-entry. Use this to generate letters of support in a letter writing campaign that will demonstrate that the community is welcoming her back, supports her release, and will offer her assistance including mentoring, resume writing and job hunting; securing housing.

F. Psychological evaluations

If your client has had a recent psychological evaluation, consider including the evaluation in the application packet if it will help to demonstrate that she understands the seriousness of the crime, shows remorse, does not have any significant behavioral concerns, and/or is ready to be a productive member of society.

In the event that you believe an evaluation would be useful but your client has not had a recent evaluation, you may consider finding a psychologist to complete one. This person should be an experienced forensic psychologist with an expertise in women who kill or who have experience in the nexus of domestic violence and lethality. Keep in mind that most psychologists do not provide pro

10 The New York Public Library’s *Connections* directory is an excellent place to find community resources in New York City. The directory is available at https://d140u095r09w96.cloudfront.net/sites/default/files/final_draft_conn17_w_cover.pdf.

bono services, though some may be willing to provide services at a discounted rate.

III. Preparing the Application Packet

Once you have gathered the evidentiary materials and have identified the individuals who will write the letters of support, it is time to prepare the application packet. The application packet is typically organized as follows:

A. Cover letter

The cover letter is your opportunity to advocate for your client. While you should not write the cover letter as a formal brief, you should draft it in a persuasive manner, guide the Parole Board as to how to apply the statutory factors, and highlight the most helpful facts and anecdotes contained in the packet. Although it is not a statutory factor, it is important to emphasize the client's remorse and responsibility. This is a critical document, as it may be the only one the Parole Board, with very limited time, will read.

An important but delicate component of the cover letter is a description of the client's history of domestic violence. In drafting this section, you must be careful to do so in a way that does not present domestic violence as an "excuse" for the crime committed. One option is to address this subject in a section discussing the seriousness of the crime. The enclosed sample application materials describe the client's history of domestic violence as a factor with respect to the seriousness of the offense, briefly summarize incidents of abuse, and even cite the testimony of an attorney who represented the client in a custody proceeding prior to her incarceration and attested to her history of domestic violence. Also consider including references to evidence that supports the history of abuse. If no corroborating evidence exists, explain why.

In rare cases where a court has reviewed an earlier decision by the Parole Board denying your client's application for parole and issued a favorable decision on the matter, make sure to discuss the decision and the court's analysis in the cover letter. The sample application materials in the resource library illustrate one way to use judicial decisions in the cover letter. In that case, the client had been denied parole on two prior occasions and challenged the Parole Board's determinations in Article 78 proceedings. The Supreme Court and the First Department issued decisions that were deeply

critical of the Parole Board's prior determination, and the cover letter to the client's third (and final) parole application begins with a detailed summary of the courts' decisions.

Even if there are no judicial opinions specifically addressing your client's case, you should consider citing to other relevant gender violence cases. Citing decisions that demonstrate how the courts interpret the statutory factors in this context and the ways in which prior parole commissioners either have misapplied or failed to apply relevant statutory factors can be powerful. The resource library contains sample cases you may consider citing. *See, e.g., In the Matter of Kellogg v. New York State Board of Parole*, Sup Ct, NY County, Mar. 23, 2017, Engoron, J., Index No. 160366/2016; *In the Matter of Ely v. New York State Board of Parole*, Sup Ct, NY County, Jan. 20, 2017, Jaffe, J., Index No. 100407/16; *In re Matter of Niki Rossakis v. New York State Board of Parole*, Index No. 101546/14 (Sup Ct, NY County Nov, 13, 2015).

B. Table of Contents

The parole packet should be as user friendly as possible for the Parole Board, so include a well-organized table of contents.

C. Personal statement

The personal statement should be drafted by the client, with your guidance and feedback. The emphasis in the personal statement should be on remorse and responsibility for the crime(s) and rehabilitation during incarceration.

D. Resume

The resume should emphasize any specialized training and leadership positions, as well as education and work experience. Your client may want to use a modified version of this resume upon release and if appropriate, she should bring it with her to employment-related meetings or programs that she attends after release.

E. Letters and other materials showing achievements, and release plans

Include copies of all the letters of support, letters describing release plans, awards, academic transcripts, behavioral

commendations, evaluations, and/or judicial decisions you would like the Commissioners to review in advance of the hearing.

Pay careful attention to the order in which the letters are included—putting the most impactful ones up front in consideration of the fact that the Commissioners will probably not read them all.

IV. Organizing and Mailing the Packet

- Assemble the materials in a spiral-bound booklet or binder.
- Tab each section of the packet. This is particularly important if the packet is lengthy. The tabs should track the sections of the table of contents and should clearly describe the contents of their corresponding sections.
- Include the client’s DIN number on the cover page of the packet.
- Mail the final parole packet to your client’s Supervising Offender Rehabilitation Coordinator at least 4-6 weeks prior to the parole interview.
- Send a copy of the full packet to your client.

RESOURCES

The Initiative’s Resource Library

DOCCS Parole Handbook

http://www.doccs.ny.gov/Parole_Handbook.html#top

DOCCS Visitation Rules, Regulations, Policies and Procedures

http://www.doccs.ny.gov/Visiting_Program_Guidelines.html

DOCCS Inmate Look Up

<http://nysdoccslookup.doccs.ny.gov/kinqw00>

Review DOCCS Directive No. 2010, *FOIL/Access to Department Records*

<http://www.doccs.ny.gov/Directives/2010.pdf>

DOCCS Directive No. 4401, *Guidance and Counseling Services*

<http://www.doccs.ny.gov/Directives/4401.pdf>

DOCCS Directive No. 4404, *Inmate Legal Visits*

<http://www.doccs.ny.gov/Directives/4404.pdf>

DOCCS Directive No. 4421, *Privileged Correspondence*

<http://www.doccs.ny.gov/Directives/4421.pdf>

DOCCS Directive No. 4423, *Inmate Telephone Calls*
<http://www.doccs.ny.gov/Directives/4423.pdf>

DOCCS Directive No. 8370, *Inmate Requests for Copies of Presentence Reports* <http://www.doccs.ny.gov/Directives/8370.pdf>

Connections 2017: *A guide for formerly incarcerated people in New York City*
https://d140u095r09w96.cloudfront.net/sites/default/files/final_draft_conn_17_w_cover.pdf

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